IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 470 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE SHARAD D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

THOBANBAHI ARJANBHAI PARMAR

Appearance:

1. Criminal Appeal No. 470 of 2002

PUBLIC PROSECUTOR for Appellant

MR KIRTIDEV R DAVE for Respondent

CORAM : MR.JUSTICE SHARAD D.DAVE

Date of decision: 09/05/2003

C.A.V. JUDGEMENT

1. Heard Mr.A.J.Desai, learned APP for the appellant - State and Mr.K.R.Dave, learned advocate for the respondent.

2. The appellant - State has filed the appeal against the acquittal order dated 23.01.2002 passed by

the learned J.M.F.C., Mangrol, District Junagadh in Criminal Case No.12 of 1994 for the offences punishable under Sections 7(i) and 16 of the Prevention of Food Adulteration Act, 1954.

3. The short facts of the appellant's case is that on 20.09.1993, at about 12.30 p.m., the appellant original complainant went to the shop of the respondent original accused and took sample of the buffalo milk from aluminium vessel which is kept for sale and sent to the F.S.L. for its report on 21.09.2003 vide report dated 26.10.1993. As per the report, there were a less fat found and the milk was not usable, accordingly, the complaint under Sections 7(i) and 16 of the P.F. Act, 1954 was filed against the present respondent - original accused. At the time of trial, complainant and one panch was examined on behalf of the prosecution. At the end of the trial, by considering the facts and circumstances of the case and taking into considering the depositions on record and authorities cited by the parties, the learned J.M.F.C., acquitted the respondent - original accused. In the submissions of learned APP for the State, the trial Court has failed to consider the provisions of Section 18 of the Act, the earned trial Court has also erred in holding that there is a breach of Section 17(a) of the Act, as according to the said section, Form No.7 should have been sent with the sample, however, in the evidence of the complainant as stated that a copy of the memorandum was sent with the sample. It is submitted that the copy of the memorandum itself is memorandum Form No.7, which were prepared in six copies and same was sent and, therefore, there is no breach of Section 17(a) of the Act. In his submission, the learned APP has also relied on the grounds as stated in the appeal memo.

4. Against the aforesaid submissions, learned advocate for the respondent has submitted that there is a difference in public analysis report and second submitted by the Central a Food Laboratory. It has come on record that the sample milk is also not a sample representative. It has also come on record that the panch witness is not an independent witness. Lastly it has not come on record that the second sample which was sent to Central Food Laboratory was a good sample for analysis or not. Under these circumstances, this Court should not interfere with the order of the acquittal passed by the learned trial Court and should dismiss the appeal.

5. I have gone through the judgment rendered by the trial Court. There was a delay of seven months in obtaining the report from Central Food Laboratory. In

this case, the sample was obtained from shop on 20.09.1993 and sent to the C.F.L. on 31.03.1994 and in turn, the report was sent by the C.F.L. on 22.04.1994. Therefore, there is chance of change in the fat shown in this C.F.L. report. Under the circumstances, I am fully agreement with the arguments advanced by Mr.K.R.Dave, learned advocate for the respondent that this is not a case where this Court should interfere in the acquittal order passed by the trial Court and accordingly, this appeal is required to be dismissed, which I do hereby. Notice is discharged.

[Sharad D. Dave,J.]

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